

# **EXHIBIT B**

**SUMMONS**  
**(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:**  
**(AVISO AL DEMANDADO):**

Spectrum Five LLC; Does 1-10

**YOU ARE BEING SUED BY PLAINTIFF:**  
**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

NematicITO Inc.; Dedi Haziza

ENDORSED  
FILED  
FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

SUM-100

SEP 17 2014

Deputy to the Santa Clara Superior Court  
Clerk of Santa Clara County, California

By: D. Yamasaki

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Santa Clara Superior Court

191 North 1st Street

San Jose, CA 95113

CASE NUMBER:  
(Número del Caso):

114CV270709

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Matthew H. Fisher, Da Vega Fisher Mechtenberg LLP, 955 Benecia Ave., Sunnyvale, CA 94085, 408-758-8974

SEP 17 2014

DAVID H. YAMASAKI

DATE:  
(Fecha)

Chief Executive Officer, Clerk

Clerk, by  
(Secretario)

Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

**NOTICE TO THE PERSON SERVED:** You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): Spectrum Five LLC

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)

4. ☒ other (specify): Limited Liability Company

4. ☒ by personal delivery on (date): 11/11/14

ATTACHMENT CV-5012

**CIVIL LAWSUIT NOTICE**

Superior Court of California, County of Santa Clara  
191 N. First St., San Jose, CA 95113

CASE NUMBER: 114CV270709**PLEASE READ THIS ENTIRE FORM**

**PLAINTIFF** (the person suing): Within 60 days after filing the lawsuit, you must serve each Defendant with the *Complaint*, *Summons*, an *Alternative Dispute Resolution (ADR) Information Sheet*, and a copy of this *Civil Lawsuit Notice*, and you must file written proof of such service.

**DEFENDANT** (The person sued): You must do each of the following to protect your rights:

1. You must file a **written response** to the *Complaint*, using the proper legal form or format, in the Clerk's Office of the Court, within **30 days** of the date you were served with the *Summons* and *Complaint*;
2. You must serve by mail a copy of your written response on the Plaintiff's attorney or on the Plaintiff if Plaintiff has no attorney (to "serve by mail" means to have an adult other than yourself mail a copy); and
3. You must attend the first Case Management Conference.

**Warning:** If you, as the Defendant, do not follow these instructions, you may automatically lose this case.

**RULES AND FORMS:** You must follow the California Rules of Court and the Superior Court of California, County of Santa Clara Local Civil Rules and use proper forms. You can obtain legal information, view the rules and receive forms, free of charge, from the Self-Help Center at 99 Notre Dame Avenue, San Jose (408-882-2900 x-2926), [www.sccselfservice.org](http://www.sccselfservice.org) (Select "Civil") or from:

- State Rules and Judicial Council Forms: [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms) and [www.courtinfo.ca.gov/rules](http://www.courtinfo.ca.gov/rules)
- Local Rules and Forms: <http://www.sccsuperiorcourt.org/civil/rule1toc.htm>

**CASE MANAGEMENT CONFERENCE (CMC):** You must meet with the other parties and discuss the case, in person or by telephone, at least 30 calendar days before the CMC. You must also fill out, file and serve a *Case Management Statement* (Judicial Council form CM-110) at least 15 calendar days before the CMC.

*You or your attorney must appear at the CMC. You may ask to appear by telephone – see Local Civil Rule 8.*

Your Case Management Judge is: Patricia Lucas Department: 2

The 1<sup>st</sup> CMC is scheduled for: (Completed by Clerk of Court)

Date: JAN 20 2015 Time: 3:00pm in Department: 2

The next CMC is scheduled for: (Completed by party if the 1<sup>st</sup> CMC was continued or has passed)

Date: \_\_\_\_\_ Time: \_\_\_\_\_ in Department: \_\_\_\_\_

**ALTERNATIVE DISPUTE RESOLUTION (ADR):** If all parties have appeared and filed a completed *ADR Stipulation Form* (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at [www.sccsuperiorcourt.org/civil/ADR/](http://www.sccsuperiorcourt.org/civil/ADR/) or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

**WARNING:** Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

ENDORSED  
FILED

SEP 17 2014

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Matthew H. Fisher, State Bar No. 229532  
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Attorneys for Plaintiffs  
NEMATICITO INC. AND DEDI HAZIZA

David H. ... Superior Court  
County of Santa Clara

By: D. Nematicito

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA CLARA

NEMATICITO INC., a Delaware corporation;  
DEDI HAZIZA, an individual;

Plaintiffs,

v.

SPECTRUM FIVE LLC, a Delaware limited  
liability company; and DOES 1-10, inclusive;

Defendants.

Case No. **14CV270709**

COMPLAINT FOR:

1. INTENTIONAL  
MISREPRESENTATION
2. NEGLIGENT  
MISREPRESENTATION
3. BREACH OF CONTRACT

DEMAND FOR JURY TRIAL

BY FAX

1 Plaintiffs allege as follows:

2 1. All allegations made in this complaint are based upon information and belief, except  
3 those allegations which pertain to the named Plaintiffs, which are based on personal knowledge. The  
4 allegations of this complaint stated on information and belief are likely to have evidentiary support  
5 after a reasonable opportunity for further investigation or discovery.

6  
7 **JURISDICTION AND VENUE**

8 2. This Court has jurisdiction over this complaint pursuant to California Code of Civil  
9 Procedure sections 410.10.

10 3. Venue is proper in this Court because the events and transactions giving rise to this  
11 action took place in the County of Santa Clara, and because obligations were incurred and to be  
12 performed in the County of Santa Clara.

13  
14 **GENERAL ALLEGATIONS**

15 4. Plaintiff NematicITO Inc. ("NematicITO") is a Delaware corporation with its  
16 principal place of business in Santa Clara County, California.

17 5. Plaintiff Dedi Haziza is an individual residing in Santa Clara County, California.

18 6. Defendant Spectrum Five LLC ("Spectrum Five") is a Delaware limited liability  
19 company, with its principal place of business in Washington, D.C.

20 7. The true names and capacities, whether individual, corporate, associate or otherwise,  
21 of the Defendants named herein under the fictitious names of DOES 1 through 10, inclusive, are  
22 unknown to Plaintiffs, who therefore sue said Defendants by such fictitious names. Plaintiffs will ask  
23 leave of Court to amend this complaint and insert the true names and capacities of said Defendants  
24 when the same have been ascertained. Each of the Defendants designated herein as a "DOE" is  
25 legally responsible in some manner for the events and happenings herein alleged, and Plaintiffs'  
26 damages as alleged herein were proximately caused by such Defendants.

1           8.       NematicITO, led by Chief Executive Officer ("CEO") Dedi Haziza, is the owner of  
2       proprietary mobile waveguide antenna systems. The technology allows for the transmission of high  
3       speed Direct Broadcast Satellite ("DBS") from geostationary satellites to mobile consumers on  
4       airplanes and automobiles. Separately from NematicITO, Mr. Haziza owns proprietary Liquid  
5       Crystal Antenna Technology for use in cell phones and wireless base stations.

6           9.       In the summer and fall of 2013, NematicITO and Mr. Haziza held discussions with  
7       major players and investors in the mobile industry, including Qualcomm, Inc., to bring their various  
8       antenna technology products to market. Spectrum Five Chief Operating Officer ("COO") Tom  
9       Sharon traveled to San Jose, California to view NematicITO's technology.

10          10.      In September 2013, Sharon approached NematicITO with a proposal to license its  
11      waveguide antenna for use by Spectrum Five and its customers in its various mobile satellite  
12      communication systems. Sharon knew of NematicITO and Mr. Haziza's concurrent negotiations  
13      with other investors, including Qualcomm, as he had been previously involved in finding investors  
14      for their products.

15          11.      Spectrum Five's initial offer to NematicITO provided for it to receive a percentage of  
16      royalties from product sales. Sharon further requested NematicITO to execute a right of first refusal  
17      as it was presenting its technology to an "important investor." NematicITO declined to do so.  
18      NematicITO and Mr. Haziza continued negotiations with Qualcomm, Spectrum Five, and other  
19      investors through September and into October 2013.

20          12.      In mid-October, Plaintiffs closed in on a deal with Qualcomm, and Mr. Haziza asked  
21      for Spectrum Five to return a prototype antenna it had sent it. Spectrum Five CEO David Wilson,  
22      however, assured Mr. Haziza that Spectrum Five had just finalized a contract to build a second  
23      satellite and was "now in a position to wrap our agreement with you."

24          13.      In a subsequent conversation with Mr. Haziza, Wilson significantly sweetened the  
25      deal by promising to extend \$1 million to NematicITO as a down payment prior to any sales of its  
26      product. Based on these representations, NematicITO and Mr. Haziza discontinued their discussions  
27

1 with other potential investors and partners, including Qualcomm, and NematicITO finalized its deal  
2 with Spectrum Five.

3 14. On or about November 27, 2013 NematicITO and Spectrum Five entered into a  
4 Technology Licensing and Development Agreement ("the Agreement"). Mr. Haziza executed the  
5 Agreement on behalf of NematicITO in the State of California.

6 15. The Agreement represented that Spectrum Five had secured rights to operate  
7 geostationary satellites providing 12/17 GHz and 17/24 GHz (DBS) Service. The Agreement called  
8 for NematicITO to provide Spectrum Five an exclusive license for its automotive and aeronautical  
9 antennas, to be used in Spectrum Five's satellite system. Spectrum Five agreed, among other things,  
10 to pay NematicITO \$1,000,000 in fixed royalty payments as follows: (i) \$200,000 30 days after the  
11 effective date of the Agreement; (ii) \$300,000 30 days after successful completion of Critical Design  
12 Review and delivery of a non-functional mockup model for the aviation product; (iii) \$250,000 30  
13 days after the completion of the prototype automotive antenna; and (iv) \$250,000 30 days after  
14 completion of the acceptance testing program for the automotive antenna. (Article III, Section 1(a)-  
15 (b).) The Agreement also provided for NematicITO to receive royalties in the form of a percentage  
16 of future product sales. Attached hereto as Exhibit 1 is a true copy of the Agreement.

17 16. That same day, Mr. Wilson emailed Mr. Haziza, stating "we look forward to working  
18 with you to use the antenna to bring the best services at the best prices to market."

19 17. In the following month, NematicITO diligently proceeded to perform the Agreement  
20 in good faith, completing industrial designs for the project.

21 18. Unbeknownst to NematicITO, however, Spectrum Five had no ability or intention of  
22 performing its side of the contract. Spectrum Five had no satellite system that could utilize  
23 NematicITO's technology. On information and belief, the Federal Communications Commission  
24 ("FCC") had cancelled Spectrum Five's authorization to provide DBS 12/17 GHz service because of  
25 its failure to complete milestones for the construction and launching of a satellite.



1           19.     Spectrum Five then obtained a new FCC license for 17/24 ("Reverse-Band") GHz  
2 service, a different set of frequencies then used for DBS service. However, on information and  
3 belief, as of 2013, Spectrum Five had not: (1) applied for or even been granted an FCC license for  
4 DBS service on this frequency; (2) had not begun construction of any satellite; (3) had not raised  
5 even 25% of the financing necessary to do so; and (4) by its own estimate would not be in a position  
6 to launch any satellite until August 2016.

7           20.     Moreover, on information and belief, as of November 27, 2013, Spectrum Five was  
8 subject to an FCC order authorizing a competitor of Spectrum Five to move its satellite into a new  
9 orbital position, which according to Spectrum Five would block its proposed Reverse-Band service.

10          21.     Unsurprisingly, Spectrum Five failed to perform the Agreement with NematicITO in  
11 any form or fashion. When the December 27, 2013 payment date for the first \$200,000 installment  
12 due under the Agreement passed, Sharon told Mr. Haziza that Spectrum Five was having difficulties  
13 in paying. Mr. Haziza was informed for the first time that there were legal issues related to  
14 Spectrum Five's securing their bands and satellite locations, as well as securing the necessary  
15 licenses for its satellites.

16          22.     Both Sharon and Wilson, however, assured Mr. Haziza they were still committed to  
17 the project and intended to perform it once Spectrum Five overcame its financial hurdles. On the  
18 basis of the above, Spectrum Five asked for an extension until January 31, 2014 to make the first  
19 \$200,000 payment.

20          23.     However, Spectrum Five did not provide the funds on the extended date, either.  
21 Sharon repeated that, while Spectrum Five was still in a problematic situation, it remained  
22 committed to the deal.

23          24.     On the basis of these representations, NematicITO continued to work on designs for  
24 the project and expended its own funds to do so in the absence of the promised funds from Spectrum  
25 Five.



25. On February 6, 2014, in light of Spectrum Five's continuing default, Nematic sent it a Notice of Termination pursuant to the Agreement. However, following this, Wilson asked Mr. Haziza if Nematic would withdraw the Notice, since he was committed to the project and a termination letter would create problems with Spectrum Five's investors.

26. In a February 9, 2014 phone call, Mr. Haziza and Sharon discussed Spectrum Five at least paying NematicITO's out-of-pocket expenses as a temporary measure until the full amount due could be provided. However, Spectrum Five did not do so. After February 12, Spectrum Five did not respond to NematicITO's further attempts at communication. As a result, on March 9, NematicITO sent it another Notice of Termination.

27. As a result of Defendants' conduct as alleged herein, Plaintiffs have suffered damages, including but not limited to: (1) loss of \$1,000,000 in promised "fixed royalty" payments pursuant to the Agreement; (2) loss of percentage royalty payments on antenna systems sales pursuant to the Agreement; (3) out-of-pocket expenses incurred by Plaintiffs in development of the project; (4) loss of business opportunity with other investors and potential partners to develop Plaintiffs' products; and (5) other damages, all in an amount to be proved at trial.

### FIRST CAUSE OF ACTION

## **Fraud - Intentional Misrepresentation**

**By All Plaintiffs Against Defendant Spectrum Five and Does 1 - 10**

28. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in the foregoing paragraphs, inclusive, as though fully incorporated herein and made a part hereof.

29. In order to induce Plaintiffs to enter into and to continue to perform the Agreement, Defendant through its representatives David Wilson and Thomas Sharon made the following representations to Plaintiffs during a series of telephone conferences and written exchanges beginning in September 2013, and continuing through February 2014:

1 a. That Defendant had the sufficient resources and had secured the necessary  
2 satellite operational rights to fulfill its obligations under the Agreement, including up-  
3 front payment of \$1,000,000 in fixed royalty payments to NematicITO;

4 b. That Defendant would honor its obligations under the Agreement, including  
5 exercising due diligence to bring plaintiffs' product to market; and

6 c. That after its initial default, Defendant remained committed to the project and  
7 would act in good faith to cure its default and perform the Agreement.

8 30. At the time Wilson and Sharon made the above representations, they were acting as  
9 Defendant's agents and representatives.

10 31. These representations were a material part of the Agreement described herein. When  
11 Wilson and Sharon made these representations to Mr. Haziza they knew them to be false and made  
12 these representations with the intention to deceive and defraud Plaintiffs and induce them to act and  
13 continue to act in reliance on these representations. In fact, Defendant had no intention or ability of  
14 extending the \$1,000,000 in promised fixed royalty payments or bringing Plaintiff's product to  
15 market. Defendant lacked the necessary financing and licensing rights to do so. Defendant instead  
16 intended through its representations to take Plaintiff's valuable product technology off the market for  
17 an extended period of time, with the purpose of keeping it out of its competitors' hands and/or  
18 selling it to an investor for a profit, without having to pay Plaintiff a right of first refusal fee.

19 32. Defendant's intent to deceive Plaintiffs was indicated by its knowledge of Plaintiffs'  
20 negotiations with other partners, its prior attempt to compel Plaintiff to execute a right of refusal and  
21 present its product to an investor, its failure to perform any portion of the Agreement, and its  
22 repeated false representations that it remained committed to the project, followed by total lack of  
23 performance or communication with Plaintiffs.

24 33. Plaintiffs reasonably relied on Defendant's representations given that it held itself out  
25 as an experienced, reputable business and did not disclose its lack of funding or failure to secure the  
26 necessary satellite licensures to perform the Agreement.

36. The aforementioned statements were intentional misrepresentations made with the intention on the part of Defendant of removing Plaintiff's product from the market without compensation. In making these intentional misrepresentations, Defendant acted in a willful, wanton and malicious manner, in callous, conscious and intentional disregard for the interests of Plaintiffs, and with knowledge that their conduct was substantially likely to vex, annoy and injure Plaintiffs. As a result, Plaintiffs are entitled to recover exemplary and punitive damages.

**By All Plaintiffs Against Defendant Spectrum Five and Does 1 – 10**

38. At the time Defendant and Plaintiff entered into the Agreement, Defendant represented that it had sufficient capital and satellite operating rights to complete the project, and that it would work in good faith and with diligence to bring Plaintiff's product to market. These representations were a material part of the Agreement described herein.

1           39.     However, Defendant failed to disclose that it had failed to secure the necessary  
2 satellite operating rights and had no ability of developing the product or extending the \$1,000,000 in  
3 promised fixed royalty funds to Plaintiff.

4           40.     When Defendant failed to disclose these facts it knew, or should have known, they  
5 were critical to Plaintiff's ability to successfully undertake and complete the project. It made the  
6 above described representations without any reasonable grounds for believing them to be true  
7 because of the lack of financing and licensure problems being experienced by Defendant.

8           41.     At the time these representations and failures to disclose were made and at the time  
9 Plaintiffs took the actions alleged herein, Plaintiffs were ignorant of the falsity of Defendant's  
10 representations and believed them to be true.

11           42.     Plaintiffs reasonably relied on Defendant's representations given that it held itself out  
12 as a reputable business and did not disclose its lack of financing or failure to secure the necessary  
13 satellite licensures to perform the Agreement. Had Defendant not made these misrepresentations,  
14 Plaintiffs would have proceeded with another business partner capable of fully funding their projects  
15 and would have brought their products to market in a timely manner.

16           43.     The above-described conduct has caused Plaintiffs to suffer substantial losses,  
17 including out of-pocket expenditures, and lost profits, all in an amount to be proven at trial.

18  
19                               **THIRD CAUSE OF ACTION**

20                               **Breach of Written Contract**

21                               **By Plaintiff NematicITO Against Defendant Spectrum Five and Does 1-10**

22           44.     Plaintiff NematicITO realleges and incorporates herein by reference each and every  
23 allegation contained in the aforementioned paragraphs, inclusive, as though fully incorporated herein  
24 and made a part hereof.

25           45.     As alleged herein, Defendant entered into a written Agreement with Plaintiff  
26 NematicITO.

7 a. Failing to pay any portion of the \$1,000,000 in fixed royalty payments owed  
8 to NematicITO under the Agreement, including \$200,000 due within 30 days of its  
9 execution;

0 b. Failing to exercise diligence in bringing NematicITO's product to the market;

1 c. Deceit and untruthfulness regarding its inability and lack of intention to  
2 perform its obligations under the Agreement; and

3 d. Otherwise acting in breach of the terms of the Agreement.

17 | PRAYER

19 || ON THE FIRST CAUSE OF ACTION:

21 For exemplary and punitive damages to be determined by the trier of fact.

23 For compensatory damages in an amount to be proved at trial.



25 | 1. For interest;

9

3. For restitution;
4. For attorneys' fees; and
5. For such other and further relief as the Court may deem just and proper.

DATED: September 17, 2014

DA VEGA FISHER MECHTENBERG LLP



By:    
Matthew S. Da Vega  
Matthew H. Fisher  
Attorneys for Plaintiffs

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a jury trial for all issues so triable.

DATED: September 17, 2014

DA VEGA FISHER MECHTENBERG LLP

By:    
Matthew S. Da Vega  
Matthew H. Fisher  
Attorneys for Plaintiffs



# EXHIBIT 1

### **Technology Licensing and Development Agreement**

This agreement is made and entered into between NematicITO Inc., a Corporation established under Delaware State law (hereinafter called **Licensor**) having its principal office at 7411 Rainbow Drive Unit 12, Cupertino CA 95014,

and

Spectrum Five LLC ("Spectrum Five"), a limited liability company organized and existing under the laws of Delaware, having an office and place of business at 807 Las Cimas Blvd, Suite 270, Austin, TX 78746 (hereinafter called **Licensee**).

**WHEREAS**, Licensee has secured rights to operate geostationary satellites in the 12/17 GHz and 17/24 GHz Broadcasting-Satellite Service, as well as Fixed-Satellite Services in several bands between 8-40 GHz; and Licensor has developed proprietary mobile waveguide antenna systems capable of receiving satellite signals transmitted from space in these same bands; and

**WHEREAS**, Licensee wishes to obtain an exclusive license for the purchase and resale of Licensor's antenna system products under the terms and conditions hereinafter set forth:

**WHEREAS**, Licensee wishes to engage the Licensor in the development of an aeronautical antenna product and an automotive product using its patented technology:

**NOW, THEREFORE**, in consideration of the premises and the faithful performance of the covenants herein contained it is agreed as follows:

#### **Article I - DEFINITIONS**

For the purpose of this agreement, the following definitions shall apply:

1. **Licensed Antenna Systems:** Shall mean:
  - a. Licensor's aeronautical mobile satellite antenna system, or any successor model capable of receiving/transmitting satellite signals in the Designated Frequency Bands and Designated Markets based on the Licensor's patented (including patentable and patent pending) steerable antenna technology as described in the patents enumerated in Attachment 1;
  - b. Licensor's terrestrial vehicle (automotive) mounted satellite antenna system (both after-market and OEM applications), or any successor model capable of receiving/transmitting satellite signals in the Designated Frequency Bands and Designated Markets based on the Licensor's patented (including patentable and patent pending) steerable antenna technology as described in the patents enumerated in Attachment 1;
  - c. Any and all improvements developed by Licensor, whether patentable or not, relating to the Licensed Antenna Systems, which Licensor may now or may hereafter develop, own or control.

- d. Any technology owned now or later developed by Licensor, which is not based on the waveguide technology described by in Appendix A, is excluded from this Agreement; however, Licensor agrees to negotiate in good faith the addition of any specific excluded technology identified by the Licensee as a modification to this Agreement.
- 2. **Gross Sales:** Shall mean total sales in U.S. dollars of the Licensed Antenna Systems.
- 3. **Confidential Proprietary Information:** Shall mean with respect to any Party all scientific, business or financial information relating to such Party, its subsidiaries or affiliates or their respective businesses, except when such information:
  - a. Becomes known to the other Party prior to receipt from such first Party;
  - b. Becomes publicly known through sources other than such first Party;
  - c. Is lawfully received by such other Party from a party other than the first Party;
  - or
  - d. Is approved for release by written authorization from such first Party.
- 4. **Exclusive License:** Shall mean a license, including the right to sublicense, whereby Licensee's rights as described herein are sole and entire and operate to exclude all others from use of the Licensor's patented steerable antenna technology in antenna systems on the Designated Frequency Bands in the Designated Markets, including Licensor and its affiliates, except as otherwise expressly provided herein. The description of the technology pertaining to the Exclusive License and list of Licensee's patents relating to the Exclusive License is included as Attachment I to this Agreement.
- 5. **Designated Frequency Bands:** Shall mean the 12 GHz (12.2-12.7 GHz) "KuBSS" and 17 GHz (17.3-17.8 GHz) "KaBSS" Broadcasting-Satellite Service frequency bands for receive-only antenna technology, and the 11-12/14 GHz (10.95-12.2 GHz receive, 13.75-14.5 GHz transmit) "KuFSS" and 20/30 GHz (17.7-20.2 GHz receive, 27.5-30.0 GHz transmit) "KaFSS" Fixed-Satellite Service frequency bands.
- 6. **Designated Markets:** Shall mean the commercial and private aviation markets and the moving vehicle after-market/OEM market in the Western Hemisphere (specifically the territory at all latitudes between the 20th meridian West and the diametrically opposed 160th meridian East).
- 7. **Know-how:** Shall mean any and all technical data, information, materials, trade secrets, technology, formulas, processes, and ideas, including any improvements thereto, in any form in which the foregoing may exist, now owned or co-owned by or exclusively, semi-exclusively or non-exclusively licensed to any party prior to the date of this Agreement or hereafter acquired by any party during the term of this agreement.
- 8. **Intellectual Property Rights:** Shall mean any and all inventions, materials, Know-how,

trade secrets, technology, formulas, processes, ideas or other discoveries conceived or reduced to practices, whether patentable or not.

9. **Royalty (ies):** Shall mean revenues received in the form of cash and/or equity from holdings from Licensees as a result of licensing, selling, sublicensing or leasing of Licensed Antenna Systems.

## ARTICLE II- GRANT OF EXCLUSIVE LICENSE AND MAINTENANCE

1. Licensors hereby grants to Licensee the Exclusive License with the right to sublicense others, to purchase, use, sell and lease the Licensed Antenna Systems.
2. Licensors retains all Intellectual Property Rights with respect to the Licensed Antenna Systems, and all rights to license, use, sell, sublicense or lease antenna systems for operation in frequency bands other than those specified in this Agreement for the Licensed Antenna Systems and for operation on platforms outside the Designated Markets.
3. Maintenance of the exclusivity provided by this Agreement is subject to the Licensee maintaining the annual minimum buy quantities of Table 1 below. Minimum quantities for periods beyond 2020 shall be set forth by mutual agreement covering five-year increments between the Licensee and the Licensors.

Table 1: Minimum Buys by Market

		2014	2015	2016	2017	2018	2019	2020
Minimum Buy Requirement for Exclusivity (measured an 18 month period beginning in the specified year)	Commercial Aviation		200	250	300	325	350	375
Minimum Buy Requirement for Exclusivity (measured an 18 month period beginning in the specified year)	Automotive (After-Market and OEM)		500	30,000	100,000	250,000	500,000	500,000

4. The Exclusive License established in this Agreement shall terminate twelve (12) years after the effective date of this Agreement, unless an extension thereof is mutually agreed by the Licensors and Licensee.
5. Licensee shall affix or caused to be affixed on a visible part of each product incorporating the Licensed Antenna System the legend "Enabled by NematicITO", or a similar legend as elected by Licensors from time to time, and a logo of Licensors. Failure to comply with this requirement shall be construed as material breach of this Agreement.

## ARTICLE III- PAYMENTS AND BASELINE CONFIGURATIONS

1. **Royalties.** For the licensed herein granted:

- a. The Licensee shall pay Licensor a total \$1,000,000.00 fixed royalty payments under the following payment schedule: (i) \$200,000.00 thirty (30) days after the effective date of this Agreement; (ii) \$300,000.00 thirty (30) days after the successful completion of the Critical Design Review (CDR) described in Paragraph 2.b of Article III below and the delivery to Licensee of the non-functional mock-up model for the aviation product; (iii) \$250,000.00 thirty (30) days after the completion of the prototype automotive antenna described in Paragraph 1.b of Article I above; (iv) \$250,000.00 thirty (30) days after completion of the acceptance testing program for the automotive antenna as described in Paragraph 2.b of Article II below.
  - b. Licensee shall pay a Royalty of seven percent (7%) of Licensee's Gross Sales of Licensed Antenna Systems of the type set forth in Paragraph 1.a of Article I above (including improvements relating thereto under Paragraph 1.c of Article I above). In the event the Licensed Antenna System is sold as an integrated component of a larger system, then the Royalty shall be the same percentage of a mutually agreed upon portion of the larger system's price. For sales in excess of \$1,000,000 annually the royalty shall be reduced to 5%.
  - c. Licensee shall pay a Royalty of five percent (5%) of Licensee's Gross Sales of the first 1,000 Licensed Antenna Systems of the type set forth in Paragraph 1.b of Article I above (including improvements relating thereto under Paragraph 1.c of Article I above). Licensee shall pay a Royalty of three percent (3%) of Licensee's Gross Sales of all Licensed Antenna Systems after the first 1,000 Licensed Antenna Systems of the type set forth in Paragraph 1.b of Article I above (including any improvements relating thereto under Paragraph 1.c of Article I above). In the event a Licensed Antenna System is sold as an integrated component of a larger system, then the Royalty shall be either 3% or 5%, as appropriate to the number of Licensed Antenna Systems sold, of a mutually agreed upon portion of the larger system's price. The Royalty payable under this paragraph is based on the total number of the relevant Licensed Antenna Systems sold during this Agreement, not annual sales.
  - d. All sums payable by Licensee under this Paragraph 1 shall be paid to Licensor in U.S. dollars, and all sums payable under Paragraphs 1.b and 1.c shall be paid quarterly to Licensor.
2. **Baseline Configuration: Aviation and Automotive Markets**
- a. Aviation Product: 18" (nominal) diameter KuFSS and KuBSS band antenna with dual-polarization capability with Minimum Gain of 32.5 dBi and G/T of (TBR) dB/°K at boresight, with scanning/tracking performance that duplicates or exceeds the receive antenna performance of the ThinAir KuFSS diameter antenna described in Attachment II. The aviation product tentatively utilizes an 8:1 elevation soft-switch (using the licensed technology described in Attachment

l) for elevation steering.

b. Automotive Product: 9" maximum diameter KaBSS/KaFSS antenna (in-roof) with electronic elevation scanning over a 25-65° elevation angle, that provides switched polarization capability, and that provides minimum gain of 30.2 dBi and G/T of (TBR) dB/°K at boresight, with scanning / tracking performance that duplicates or exceeds the receive antenna performance of the ThinAir KuFSS diameter antenna described in Attachment II. At the Critical Design Review ("CDR"), the Licensor will present, and Licensor and Licensee will mutually agree upon, the design for the prototype antenna that meets these requirements as well as the proposed design for the tracking system and associated electronics. The final specifications and acceptance testing program for this antenna will also be mutually agreed upon at CDR. The automotive product will tentatively utilize a 4:1 soft switch (using the licensed technology described in Attachment I) for elevation steering.

3. **Sublicenses.** The granting and terms of all sublicenses is entirely at Licensee's discretion provided that all sublicenses shall be subjected to the terms and conditions of this agreement.
4. **Royalty rate when a sale is made:** A sale of Licensed Antenna Systems shall be regarded as being made upon receipt of payment in full by Licensee for such Licensed Antenna Systems.

#### ARTICLE IV - REPORTS, BOOKS AND RECORDS

1. **Reports.** Within thirty (30) days after the end of the calendar quarter annual period during which this agreement shall be executed and delivered within thirty (30) days after the end of each following quarter annual period, Licensee shall make a written report to Licensor setting forth the Gross Sales of Licensed Antenna Systems sold, leased or used by Licensee and total sublicensing receipts during the quarter annual period. If there are no Gross Sales or sublicensing receipts, a statement to that effect shall be made by Licensee to Licensor. At the time each report is made, Licensee shall pay to Licensor the royalties or other payments shown by such report to the payable hereunder.
2. **Books and records.** Licensee shall keep books and records in such reasonable detail as will permit the reports provided for in Paragraph 1 of this Article IV to be determined. Licensee further agrees to permit such books and reports to be inspected and audited by a representative or representatives of Licensor to the extent necessary to verify the reports provided for in Paragraph 1 of this Article IV; provided, however, that such representative or representatives shall indicate to Licensor only whether the reports and royalty paid are correct, if not, the reasons why not.

#### **ARTICLE V - DILIGENCE**

Licensee shall use its best efforts to market the Licensed Antenna Systems throughout the life of this agreement.

#### **ARTICLE VI - TERMINATION**

##### **1. Termination by Licensee.**

**Option of Licensee:** Licensee may terminate the license granted by this agreement, provided Licensee shall not be in default hereunder, by giving Licensors thirty (30) days notice to its intention to do so. If such notice shall be given, then upon the expiration of such thirty (30) days, the termination shall become effective; but such termination shall not operate to relieve Licensee from its obligation to pay royalties or to satisfy any other obligations, accrued hereunder prior to the date of such termination. Upon termination by Licensee, all product designs developed under this Agreement shall be owned free and clear by Licensors.

If Licensee terminates this agreement for cause, it shall so specify in the notice above.

##### **2. Termination by Licensors.**

**Option of Licensors:** Licensors may, at its option, terminate this agreement by written notice to Licensee in case of:

- a. Default in the payment of any royalties required to be paid by Licensee to Licensors hereunder, provided such default continues for a period of thirty (30) days after Licensors shall have given Licensee written notice of such default.
- b. Failure on the part of the Licensee to meet the minimum buy requirements of Paragraph 3 of Article II for which the Designated Market minimum buy requirement is not met.
- c. Default in the making of any reports required hereunder, provided such default continues for a period of thirty (30) days after Licensors shall have given Licensee written notice of such default.
- d. Default in the performance of any other material obligation contained in this Agreement on the part of Licensee to be performed, provided such default shall continue for a period of thirty (30) days after Licensors shall have given Licensee written notice of such default.
- e. Adjudication that Licensee is bankrupt or insolvent.



3. **Effect of termination.**

Termination of this Agreement shall not in any way operate to impair or destroy any of Licensee's or Licensor's rights or remedies, either at law or in equity, or to relieve Licensee of any of its obligations to pay royalties or to comply with any other of the obligations hereunder, accrued prior to the effective date of termination, including any obligations that specifically survive termination of this Agreement.

**ARTICLE VII - NOTICES, ASSIGNEES**

1. **Notices.** Notices and payments required hereunder shall be deemed properly given if duly sent by first class mail and addressed to the parties at the addresses set forth above. The parties hereto will keep each other advised of address changes.
2. **Assignment.** This Agreement shall not be assigned by either party without the consent of the other party, which consent shall not be unreasonably withheld. Furthermore, Licensor shall not assign its rights to the patentable steerable antenna technology used in the Licensed Antenna Systems without the consent of Licensee, which consent shall not be unreasonably withheld.

**ARTICLE VIII - MISCELLANEOUS**

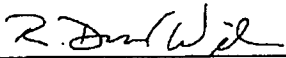
1. **Governing Law.** This Agreement is governed by and shall be construed in accordance with the laws of the State of Delaware, without regard to its conflict of laws rules.
2. **Exclusive Agreement.** This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter thereof, and supersedes all prior agreements, representations and understandings of the parties, written or oral.
3. **No representations or warranties regarding intellectual property rights of third parties.** No representations or warranty is made by Licensor that the Licensed Antenna Systems are, used, sold or leased under the Exclusive License granted herein are or will be free of claims of infringement of patent rights of any other person or persons. The Licensor warrants that it has the ability to enter into this Agreement regarding the Licensed Antenna Systems.
4. **Indemnity.** Licensee shall indemnify, hold harmless, and defend Licensor and its trustees, officers, employees and agents against any and all allegations and actions for death, illness, personal injury, property damage, and improper business practices arising out of the use of the Licensed Antenna Systems. Licensor shall not knowingly incorporate in the Licensed Antenna System any intellectual property owned by a third party without obtaining license to such intellectual property at Licensor's expense.

5. **Confidentiality.** The parties agree to maintain discussions and proprietary information revealed pursuant to this Agreement in confidence, to disclose them only to persons within their respective organizations having a need to know, and to furnish assurances to the other party that such persons understand this duty on confidentiality.
6. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.
7. **Amendment.** This Agreement may be amended only by written agreement of the parties.
8. **Further Assurances.** The parties shall execute such further documents and do any and all such further things as may be necessary to implement and carry out the intent of this Agreement.

In witness whereof, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

The effective date of this Agreement is November 27<sup>th</sup> 2013.

**Licensor:** Spectrum Five LLC

**Signature:** 

**Name:** R. David Wilson

**Title:** Chief Executive Officer

**Licensee:** NematicITO Inc.

**Signature:** 

**Name:** Dedi David Haziza

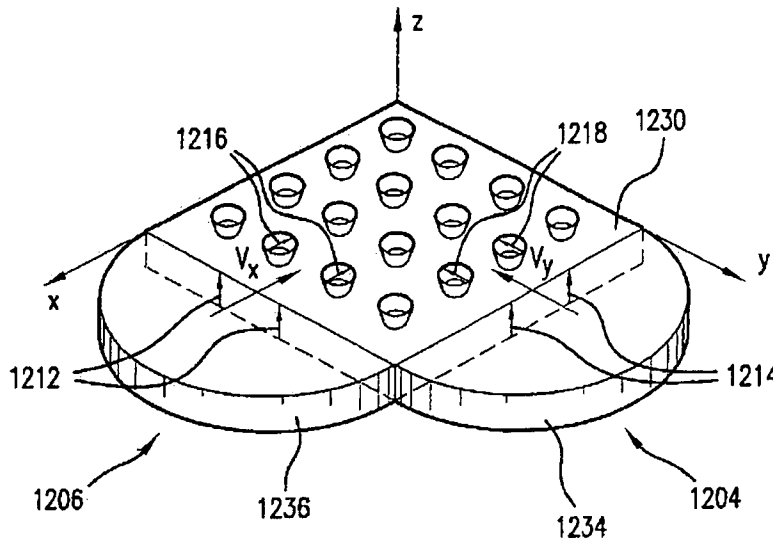
**Title:** Chief Executive Officer

**Attachment I: Description of the Waveguide Technology Covered by the Exclusive Licensing Agreement.**

**1. Description and List of Patents: for waveguide and soft switch technology**

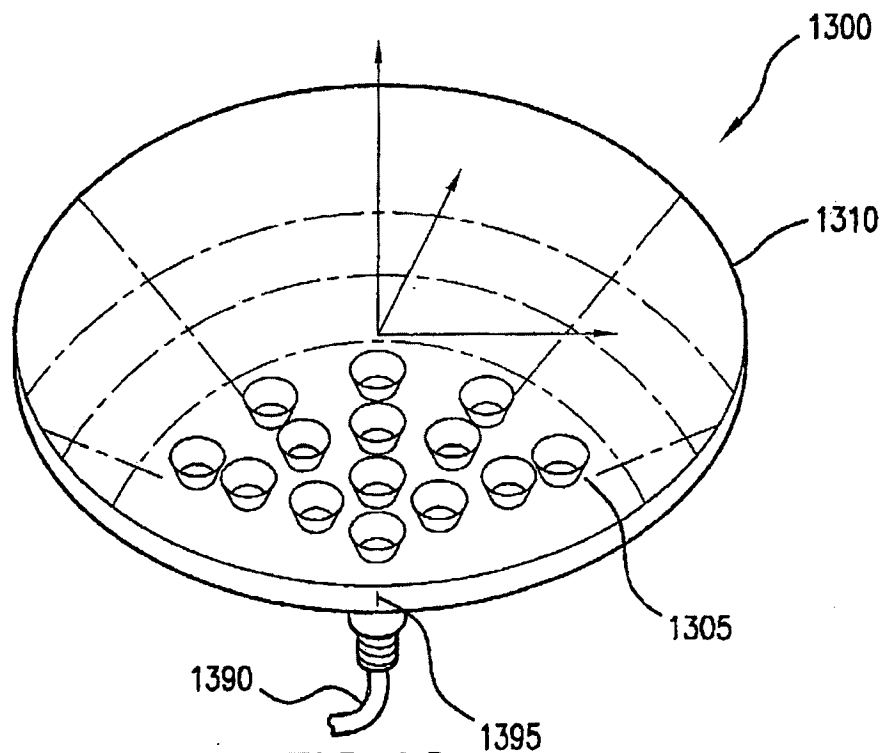
1. US Patent 7656359 - Multi-Beam/Scanning RF Feeds and Arrays – Waveguide Antenna technology core.
2. US Patent 7884779 - Low Loss Multiple Input soft-switch technology.
3. US Patent Pending - Application Number 61905280 covering the following:
  - a. Dual Polarization Array and Feeds.
  - b. Phase/Frequency shifting waveguide and Array.
  - c. Polarizing Radiating elements
  - d. Planar wave-spider feeds, wide range scanning.

Fig 12B describes a certain realization of the dual polarization, flat waveguide antenna array with two reflector feeds, one for each polarization. The incorporation of a multi-beam feed solution with the similar or identical array configuration will allow elevation multi-beam operation.



**FIG. 12B**

**Illustration of Dual-polarization Waveguide Array Antenna US Patent 7656359**

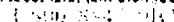


**FIG. 13**

**Illustration of Circular Waveguide Array Antenna form US Patent 7656359**

**For Both Figure 13 and 12B the patented soft-switch multi-beam solution described below will be incorporated to enable low loss elevation scanning of the antenna.**





1. *Journal of the American Medical Association*, 1997; 277: 1033-1038.

12

**3. US Patent Pending - application Number 61905280 covering the following:**

- e. Dual Polarization Array and Feeds.**
- f. Phase/Frequency shifting waveguide and Array.**
- g. Polarizing Radiating elements**
- h. Planar wave-spider feeds, wide range scanning.**

**4. Assignment Agreements between Wavebender and Dedi David Haziza for Waveguide Antenna and Soft Switch Technology**

USPTO Assignments on the Web

9/16/12 11:05 AM



Assignments on the Web > [Patent Assignments](#)

**Patent Assignment Assignee Details**

*NO PATENT HAS BEEN GRANTED FOR THIS APPLICATION. THE INFORMATION CONTAINED HEREIN IS FOR INFORMATIONAL PURPOSES ONLY.*

**Assignment: 2**

Reel/Frame: 028307/0739

Pages: 2

Recorded: 08/17/2012

Attorney Dkt #: 066340-000001

Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

**Assignor**

1 WAVEBENDER, INC.

Exec Dt: 05/05/2012

**Assignee**

1 HAZIZA, DEDI DAVID

200 WINCHESTER CIRCLE #223  
LOS GATOS, CALIFORNIA 95032

**Property**

Pat #	Pub #	App #
7686352	US20080117114	1:032361

**Correspondence name and address**



**Assignment: 3**

Reel/Frame: Q26807/0762

Pages: 2

Recorded: 08/17/2012

Attorney Dkt #: 066340-000001

Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

**Assignor**

1 WAVEBENDER, INC.

Exec Dt: 06/05/2012

**Assignee**

1 HAZIZA, ODED DAVID  
200 WINCHESTER CIRCLE #E23  
LOS GATOS, CALIFORNIA 95032

**Property**

Pat #	Pub #	App #
Z85A779	US20060116142	11941754

**Correspondence name and address**

NIXON PEABODY LLP  
401 NINTH STREET, N.W.  
SUITE 900  
WASHINGTON, DC 20004

**Attachment II: ThinAir Falcon-Ku Data Sheet**

**General Information (Antenna)**

**Swept Volume Dimensions:** 74"L x 35"W x 4.0"H  
(188cm x 89cm x 10cm)  
**Transmit Band:** 13.75-14.50 GHz  
**Receive Band:** 10.70-12.75 GHz  
**G/T:** 15 to 18 dB/K (12 dB/K at 20° Elev)  
**EIRP:** 51 to 54 dBW (49 dBW at 20° Elev, 40W BUC)  
**Transmit Power Spectral Density:** (per 47 CFR 25.222)  
 17 to 18 dBW/4 KHz at High Latitudes (to 65° N/S)  
 16 to 18 dBW/4 KHz PSD over CONUS (83W to 118W)  
 15 to 18 dBW/4 KHz PSD over Equator (Longitude +/- 35°)  
**Geo-Plane Beamwidth (Typ):** 1.85° Transmit & 2.15° Receive  
 (24"H x 36"W Elliptical Dish equivalent)  
**Geo-Plane Patterns (Typ):** First Sidelobe -22 dB (typical)  
**Polarization:** Tracking Linear (Co-Pol or Orthogonal-Pol)  
**X-pol Isolation:** 30 - 35 dB

**Tracking**

**Azimuth Coverage:** 360° continuous  
**Elevation Coverage:** (+10°) +15° to +85°  
**Agility (ARINC 429 NAV):** >120°/sec, >300°/sec<sup>2</sup>  
**Tracking Accuracy:** < 0.2°

**Environmental**

**Operational Temperature:** -55°C to +74°C external  
**Environmental Compatibility:** RTCA/DO-160G & MIL-STD-810G

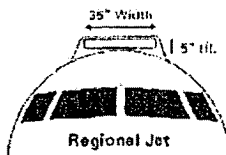
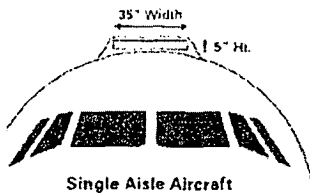
**Performance (Dependent on Modem, Waveform & Bandwidth)**

**Data Rate (Forward Link/Receive):** 65 to 90 Mbps  
**Data Rate (Return Link/Transmit):** 8 to 15 Mbps

**Advantages and Benefits (relative to high profile radome antennas)**

- \$40K-\$125K fuel savings per aircraft per year - reduced drag enabled by low profile
- Deflector can be reinforced for bird strike w/o affecting RF performance
- Superior equatorial performance (high skew angle operation)
- Supports 2x to 3x higher Forward Link (Receive) data rates
- Supports 4x to 6x higher Return Link (Transmit) data rates
- Fuselage-mount compatible with regional, single-aisle & dual-aisle aircraft
- Equivalent performance to a 24"H x 36"W Ku-Band Elliptical Dish Antenna
- 30% to 80% lower transponder cost (\$/MB)
- Commercial and Government Ka-band
- High-reliability direct-drive gimbal

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# Thin Falcon-Ku



Antenna Subsystem



Antenna Control Unit



High Power Transceiver



Modem Unit

## Thin

Global Connectivity

[www.thinair.com](http://www.thinair.com)

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**X-pol Isolation:** 30 - 35 dB

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**Azimuth Coverage:** 360° continuous  
**Elevation Coverage:** (+10°) +15° to +85°  
**Agility (ARINC 429 NAVI):** >120°/sec, >300°/sec<sup>2</sup>  
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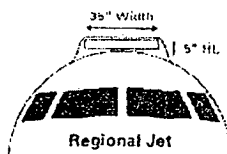
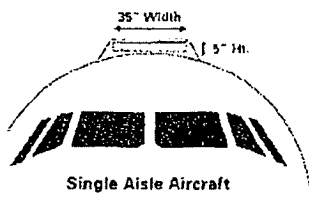
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# Thin Falcon-Ku



Antenna Subsystem



Antenna Control Unit



High Power Transceiver



Modem Unit

# Thin

Global Connectivity

[www.thinkom.com](http://www.thinkom.com)

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**SANTA CLARA COUNTY SUPERIOR COURT  
ALTERNATIVE DISPUTE RESOLUTION  
INFORMATION SHEET**

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Many cases can be resolved to the satisfaction of all parties without the necessity of traditional litigation, which can be expensive, time consuming, and stressful. The Court finds that it is in the best interests of the parties that they participate in alternatives to traditional litigation, including arbitration, mediation, neutral evaluation, special masters and referees, and settlement conferences. Therefore, all matters shall be referred to an appropriate form of Alternative Dispute Resolution (ADR) before they are set for trial, unless there is good cause to dispense with the ADR requirement.

***What is ADR?***

ADR is the general term for a wide variety of dispute resolution processes that are alternatives to litigation. Types of ADR processes include mediation, arbitration, neutral evaluation, special masters and referees, and settlement conferences, among others forms.

***What are the advantages of choosing ADR instead of litigation?***

ADR can have a number of advantages over litigation:

- **ADR can save time.** A dispute can be resolved in a matter of months, or even weeks, while litigation can take years.
- **ADR can save money.** Attorney's fees, court costs, and expert fees can be reduced or avoided altogether.
- **ADR provides more participation.** Parties have more opportunities with ADR to express their interests and concerns, instead of focusing exclusively on legal rights.
- **ADR provides more control and flexibility.** Parties can choose the ADR process that is most likely to bring a satisfactory resolution to their dispute.
- **ADR can reduce stress.** ADR encourages cooperation and communication, while discouraging the adversarial atmosphere of litigation. Surveys of parties who have participated in an ADR process have found much greater satisfaction than with parties who have gone through litigation.

***What are the main forms of ADR offered by the Court?***

**Mediation** is an informal, confidential, flexible and non-binding process in the mediator helps the parties to understand the interests of everyone involved, and their practical and legal choices. The mediator helps the parties to communicate better, explore legal and practical settlement options, and reach an acceptable solution of the problem. The mediator does not decide the solution to the dispute; the parties do.

Mediation may be appropriate when:

- The parties want a non-adversary procedure
- The parties have a continuing business or personal relationship
- Communication problems are interfering with a resolution
- There is an emotional element involved
- The parties are interested in an injunction, consent decree, or other form of equitable relief

**Neutral evaluation**, sometimes called "Early Neutral Evaluation" or "ENE", is an informal process in which the evaluator, an experienced neutral lawyer, hears a compact presentation of both sides of the case, gives a non-binding assessment of the strengths and weaknesses on each side, and predicts the likely outcome. The evaluator can help parties to identify issues, prepare stipulations, and draft discovery plans. The parties may use the neutral's evaluation to discuss settlement.

Neutral evaluation may be appropriate when:

- The parties are far apart in their view of the law or value of the case
- The case involves a technical issue in which the evaluator has expertise
- Case planning assistance would be helpful and would save legal fees and costs
- The parties are interested in an injunction, consent decree, or other form of equitable relief

-over-

**Arbitration** is a less formal process than a trial, with no jury. The arbitrator hears the evidence and arguments of the parties and then makes a written decision. The parties can agree to binding or non-binding arbitration. In binding arbitration, the arbitrator's decision is final and completely resolves the case, without the opportunity for appeal. In non-binding arbitration, the arbitrator's decision could resolve the case, without the opportunity for appeal, unless a party timely rejects the arbitrator's decision within 30 days and requests a trial. Private arbitrators are allowed to charge for their time.

Arbitration may be appropriate when:

- The action is for personal injury, property damage, or breach of contract
- Only monetary damages are sought
- Witness testimony, under oath, needs to be evaluated
- An advisory opinion is sought from an experienced litigator (if a non-binding arbitration)

**Civil Judge ADR** allows parties to have a mediation or settlement conference with an experienced judge of the Superior Court. Mediation is an informal, confidential, flexible and non-binding process in which the judge helps the parties to understand the interests of everyone involved, and their practical and legal choices. A settlement conference is an informal process in which the judge meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations. The request for mediation or settlement conference may be made promptly by stipulation (agreement) upon the filing of the Civil complaint and the answer. There is no charge for this service.

Civil Judge ADR may be appropriate when:

- The parties have complex facts to review
- The case involves multiple parties and problems
- The courthouse surroundings would be helpful to the settlement process

**Special masters and referees** are neutral parties who may be appointed by the court to obtain information or to make specific fact findings that may lead to a resolution of a dispute.

Special masters and referees can be particularly effective in complex cases with a number of parties, like construction disputes.

**Settlement conferences** are informal processes in which the neutral (a judge or an experienced attorney) meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations.

Settlement conferences can be effective when the authority or expertise of the judge or experienced attorney may help the parties reach a resolution.

***What kind of disputes can be resolved by ADR?***

Although some disputes must go to court, almost any dispute can be resolved through ADR. This includes disputes involving business matters; civil rights; collections; corporations; construction; consumer protection; contracts; copyrights; defamation; disabilities; discrimination; employment; environmental problems; fraud; harassment; health care; housing; insurance; intellectual property; labor; landlord/tenant; media; medical malpractice and other professional negligence; neighborhood problems; partnerships; patents; personal injury; probate; product liability; property damage; real estate; securities; sports; trade secret; and wrongful death, among other matters.

***Where can you get assistance with selecting an appropriate form of ADR and a neutral for your case, information about ADR procedures, or answers to other questions about ADR?***

**Contact:**

Santa Clara County Superior Court  
ADR Administrator  
408-882-2530

Santa Clara County DRPA Coordinator  
408-792-2784